

“(11) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) AFFORDABLE HOUSING.—The term ‘affordable housing’ means rental or homeownership dwelling units that—

“(i) are made available for initial occupancy to low-income families, with a subset of units made available to very- and extremely-low income families; and

“(ii) are subject to the same rules regarding occupant contribution toward rent or purchase and terms of rental or purchase as dwelling units in public housing projects assisted with a grant under this section.

“(B) SMALLER COMMUNITY.—The term ‘smaller community’ means a unit of general local government (as such term is defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) that—

“(i) has a population of 50,000 or fewer; and

“(ii) (I) is not served by a public housing agency; or

“(II) is served by a single public housing agency, which agency administers 100 or fewer public housing dwelling units.”.

(C) ANNUAL REPORT.—Section 24(l) of the United States Housing Act of 1937 (42 U.S.C. 1437v(l)) is amended—

(1) in paragraph (3), by striking “; and” and inserting “, including a specification of the amount and type of assistance provided under subsection (n);”; and

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) the types of projects funded, and number of affordable housing dwelling units developed with, grants under subsection (n); and”.

(d) FUNDING.—Section 24(m) of the United States Housing Act of 1937 (42 U.S.C. 1437v(m)) is amended by adding at the end the following:

“(3) SET-ASIDE FOR MAIN STREET HOUSING GRANTS.—Of the amount appropriated pursuant to paragraph (1) for any fiscal year, the Secretary shall provide up to 5 percent for use only for grants under subsection (n).”.

TITLE V—COMMUNITY DEVELOPMENT BLOCK GRANTS

SEC. 501. FUNDING FOR INSULAR AREAS.

(a) DEFINITION OF INSULAR AREAS.—Section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)) is amended by adding at the end the following:

“(24) The term ‘insular area’ means each of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.”.

(b) DEFINITION OF UNIT OF GENERAL GOVERNMENT.—The first sentence of section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)) is amended—

(1) by inserting “and” after “Secretary;”; and

(2) by striking “; and the Trust Territory of the Pacific Islands”.

(c) STATEMENT OF ACTIVITIES AND REVIEW.—Section 104 of the Housing and Community Development Act of 1974 (42 U.S.C. 5304) is amended—

(1) in subsection (a)(1)—

(A) in the first sentence—

(i) by striking “or” after “State;”; and

(ii) by inserting “or under section 106(a)(3) by any insular area,” after “government;”; and

(B) in the second sentence—

(i) by striking “and in the case of” and inserting a comma; and

(ii) by inserting “and insular areas receiving grants pursuant to section 106(a)(3),” after “106(d)(2)(B);”; and

(2) in subsection (e)(1), by striking “section 106(b) or section 106(d)(2)(B)” and inserting

“subsection (a)(3), (b), or (d)(2)(B) of section 106”; and

(3) in subsection (m)—

(A) in paragraph (1), by inserting “(a)(2),” after “under subsection”; and

(B) in paragraph (2), by striking “government—” and inserting “government other than an insular area—”.

(d) ALLOCATION AND DISTRIBUTION OF FUNDS.—Section 106(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(a)) is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking “an appropriation Act” and inserting “appropriation Acts”; and

(B) by striking “in any year” and inserting “for such fiscal year”; and

(2) in paragraph (2), by inserting “under paragraph (1) and after reserving such amounts for insular areas under paragraph (2)” after “tribes”; and

(3) in paragraph (3), by striking “paragraphs (1) and (2)” and inserting “paragraphs (1), (2), and (3)”

(4) by redesignating paragraphs (2) and (3) (as so amended) as paragraphs (3) and (4); and

(5) by inserting after paragraph (1) the following:

“(2) For each fiscal year, of the amount approved in appropriation Acts under section 103 for grants for such fiscal year (excluding the amounts provided for use in accordance with section 107), the Secretary shall reserve for grants to insular areas \$7,000,000. The Secretary shall provide for distribution of amounts under this paragraph to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas. In determining the distribution of amounts to insular areas, the Secretary may also include other statistical criteria as data become available from the Bureau of the Census, but only if such criteria are contained in a regulation promulgated by the Secretary after notice and public comment.”.

(e) CONFORMING AMENDMENT.—The first sentence of section 106(d)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)(1)) is amended by striking “paragraphs (1) and (2)” and inserting “paragraphs (1), (2), and (3)”.

(f) SPECIAL PURPOSE GRANTS.—Section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. 5307) is amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (A); and

(B) by redesignating subparagraphs (B) through (H) as subparagraphs (A) through (G), respectively; and

(2) in subsection (b)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (7) as paragraphs (1) through (6), respectively.

(g) REGULATIONS.—The Secretary of Housing and Urban Development shall issue regulations to carry out the amendments made by this section, which shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

PRIVILEGE OF THE FLOOR

Mr. GRASSLEY. Mr. President, I would like to make a unanimous consent request for Senator BAUCUS. He asked consent that John Colleran, Jill Davidsaver, Mandon Lovett, Justin Bonsey, Brittany Dalton, and Diana Birkett be granted the privilege of the floor for the duration of the floor debate on Medicare.

The PRESIDING OFFICER. Without objection, it is so ordered.

NASA FLEXIBILITY ACT OF 2003

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 236, S. 610.

The PRESIDING OFFICER. The clerk will State the bill by title.

A bill (S. 610) to amend the provision of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel positions to the National Aeronautics and Space Administration, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 610

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

[This Act may be cited as the “NASA Workforce Flexibility Act of 2003”.

SEC. 2. WORKFORCE AUTHORITIES AND PERSONNEL PROVISIONS.

[(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

“CHAPTER 99—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

“SUBCHAPTER I—WORKFORCE AUTHORITIES

“Sec.

“9901. Definitions.

“9902. Planning, notification, and reporting requirements.

“9903. Workforce authorities.

“9904. Recruitment, redesignation, and relocation bonuses.

“9905. Retention bonuses.

“9906. Term appointments.

“9907. Pay authority for critical positions.

“9908. Assignments of intergovernmental personnel.

“9909. Enhanced demonstration project authority.

“SUBCHAPTER II—PERSONNEL PROVISIONS

“9931. Definitions.

“9932. Administration and private sector exchange assignments.

“9933. Science and technology scholarship program.

“9934. Distinguished scholar appointment authority.

“9935. Travel and transportation expenses of certain new appointees.

“9936. Annual leave enhancements.

“9937. Limited appointments to Senior Executive Service positions.

“9938. Superior qualifications pay.

“SUBCHAPTER I—WORKFORCE AUTHORITIES

“§ 9901. Definitions

[In this subchapter—

“(1) the term ‘Administration’ means the National Aeronautics and Space Administration;

“(2) the term ‘Administrator’ means the Administrator of the National Aeronautics and Space Administration;

“(3) the term ‘critical need’ means a specific and important requirement of the Administration’s mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because of—

["(A) the inability to fill positions; or
 ["(B) employees do not possess the requisite skills;

["(4) the term 'employee' means an individual employed in or under the Administration; and

["(5) the term 'workforce plan' means the plan required under section 9902(a).

["§ 9902. Planning, notification, and reporting requirements

["(a) Before exercising any of the workforce authorities under this subchapter, the Administrator shall submit a written plan to the Office of Personnel Management for approval. A plan under this subchapter may not be implemented without the approval of the Office of Personnel Management.

["(b) A workforce plan shall include a description of—

["(1) each critical need of the Administration and the criteria used in the identification of that need;

["(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

["(i) address critical needs; and

["(ii) would be eligible for each authority proposed to be exercised under section 9903; and

["(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

["(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under section 9903; and

["(B) the reasons why those needs would not be so addressed;

["(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9904 and 9905 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

["(5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles;

["(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B); and

["(7) the methods that will be used to determine if the authorities exercised under section 9903 have successfully addressed each critical need identified under paragraph (1).

["(c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan, and any additional information which the Administrator considers appropriate.

["(d)(1)(A) The Administrator may submit any modifications to the workforce plan to the Office of Personnel Management. Modifications to the workforce plan may not be implemented without the approval of the Office of Personnel Management.

["(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration.

["(2) Any reference in this subchapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

["(e) None of the workforce authorities made available under section 9903 may be exercised in a manner inconsistent with the workforce plan.

["(f) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and

Budget for any year, the Administration shall at the same time submit a copy of such plan to—

["(1) the Committee on Governmental Affairs and the Committee on Appropriations of the Senate; and

["(2) the Committee on Government Reform and the Committee on Appropriations of the House of Representatives.

["§ 9903. Workforce authorities

["(a) The workforce authorities under this subchapter are the following:

["(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9904.

["(2) The authority to pay retention bonuses under section 9905.

["(3) The authority to make term appointments and to take related personnel actions under section 9906.

["(4) The authority to fix rates of basic pay for critical positions under section 9907.

["(5) The authority to extend intergovernmental personnel act assignments under section 9908.

["(b) No authority under this subchapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

["(c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to section 5307.

["§ 9904. Recruitment, redesignation, and relocation bonuses

["(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

["(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

["(2) the individual—

["(A) is newly appointed as an employee of the Federal Government;

["(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

["(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

["(b) If the position is described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed—

["(1) 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a, as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

["(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

["(c) If the position is not described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed—

["(1) 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

["(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

["(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

["(B) At a minimum, the service agreement shall include—

["(i) the required service period;

["(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

["(iii) the amount of the bonus and the basis for calculating that amount; and

["(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

["(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

["(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

["(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

["§ 9905. Retention bonuses

["(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

["(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee's services makes it essential to retain the employee; and

["(2) the employee would be likely to leave in the absence of a retention bonus.

["(b) If the position is described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

["(c) If the position is not described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

["(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

["(B) At a minimum, the service agreement shall include—

["(i) the required service period;

["(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

["(iii) the amount of the bonus and the basis for calculating the amount; and

["(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

["(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

["(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of

any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

[(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

[(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753, or under section 9904.

["§ 9906. Term appointments

[(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

[(b) Notwithstanding chapter 33, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

[(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33, to the term position;

[(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

[(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

[(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

[(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

[(c) Notwithstanding chapter 33, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

[(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

[(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

["§ 9907. Pay authority for critical positions

[(a) In this section, the term 'position' means—

[(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

[(2) a position under the Executive Schedule under sections 5312 through 5317;

[(3) a position established under section 3104; or

[(4) a senior-level position to which section 5376(a)(1) applies.

[(b) Authority under this section—

[(1) may be exercised only with respect to a position that—

[(A) is described as addressing a critical need in the workforce plan under section 9902(b)(2)(A); and

[(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

[(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

[(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

[(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

[(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

[(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

[(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

[(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

["§ 9908. Assignments of intergovernmental personnel

[(For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking 'two' and inserting 'four'.]

["§ 9909. Enhanced demonstration project authority

[(When conducting a demonstration project at the Administration, section 4703(d)(1)(A) may be applied by substituting 'such numbers of individuals as determined by the Administrator' for 'not more than 5,000 individuals'.]

"SUBCHAPTER II—PERSONNEL PROVISIONS

["§ 9931. Definitions

[(In this subchapter—

[(1) the term 'Administration' means the National Aeronautics and Space Administration; and

[(2) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration.

["§ 9932. Administration and private sector exchange assignments

[(a) In this section—

[(1) the term 'private sector employee' means an employee of a private sector entity; and

[(2) the term 'private sector entity' means an organization, company, corpora-

tion, or other business concern, or a foreign government or agency of a foreign government, that is not a State, local government, Federal agency, or other organization as defined under section 3371 (1), (2), (3), and (4), respectively.

[(b)(1) On request from or with the concurrence of a private sector entity, and with the consent of the employee concerned, the Administrator may arrange for the assignment of—

[(A) an employee of the Administration serving under a career or career-conditional appointment, a career appointee in the Senior Executive Service, or an individual under an appointment of equivalent tenure in an excepted service position, but excluding employees in positions which have been excepted from the competitive service by reasons of their confidential, policy-determining, policymaking, or policy-advocating character, to a private sector entity; and

[(B) an employee of a private sector entity to the Administration, for work of mutual concern to the Administration and the private sector entity that the Administrator determines will be beneficial to both.

[(2) The period of an assignment under this section may not exceed 2 years. However, the Administrator may extend the period of assignment for not more than 2 additional years.

[(3) An employee of the Administration may be assigned under this section only if the employee agrees, as a condition of accepting an assignment, to serve in the Administration upon the completion of the assignment for a period equal to the length of the assignment. The Administrator may waive the requirement under this paragraph, with the approval of the Office of Management and Budget, with respect to any employee if the Administrator determines it to be in the best interests of the United States to do so.

[(4) Each agreement required under paragraph (3) shall provide that if the employee fails to carry out the agreement (except in the case of a waiver made under paragraph (3)), the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount due shall be treated as a debt due the United States.

[(c)(1) An Administration employee assigned to a private sector entity under this section is deemed, during the assignment, to be on detail to a work assignment (as a detailee to the entity).

[(2) An Administration employee assigned under this section on detail remains an employee of the Administration. Chapter 171 of title 28 and any other Federal tort liability statute apply to the Administration employee so assigned, and all defenses available to the United States under these laws or applicable provisions of State law shall remain in effect. The supervision of the duties of an Administration employee assigned to the private sector entity through detail may be governed by agreement between the Administration and the private sector entity concerned.

[(3) The assignment of an Administration employee on detail to a private sector entity under this section may be made with or without reimbursement by the private sector entity for the travel and transportation expenses to or from the place of assignment, for the pay, or supplemental pay, or a part thereof, of the employee, or for the contribution of the Administration to the employee's benefit systems during the assignment. Any reimbursements shall be credited to the appropriation of the Administration used for paying the travel and transportation expenses, pay, or benefits, and not paid to the employee.

["(d)(1) An employee of a private sector entity who is assigned to the Administration under an arrangement under this section shall be deemed on detail to the Administration.

["(2) During the period of assignment, a private sector employee on detail to the Administration—

["(A) is not entitled to pay from the Administration, except to the extent that the pay received from the private sector entity is less than the appropriate rate of pay which the duties would warrant under the pay provisions of this title or other applicable authority;

["(B) is deemed an employee of the Administration for the purpose of chapter 73 of this title, the Ethics in Government Act of 1978, section 27 of the Office of Federal Procurement Policy Act, sections 201, 203, 205, 207, 208, 209, 602, 603, 606, 607, 610, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, chapter 171 of title 28, and any other Federal tort liability statute, and any other provision of Federal criminal law, unless otherwise specifically exempted;

["(C) notwithstanding subparagraph (B), is also deemed to be an employee of his or her private sector employer for purposes of section 208 of title 18; and

["(D) is subject to such regulations as the Administrator may prescribe.

["(3) The supervision of the duties of an employee assigned under this subsection may be governed by agreement between the Administration and the private sector entity.

["(4) A detail of a private sector employee to the Administration may be made with or without reimbursement by the Administration for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the private sector entity, or a part thereof, to employee benefit systems.

["(5)(A) A private sector employee on detail to the Administration under this section who suffers disability or dies as a result of personal injury sustained while in the performance of duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81 as an employee as defined under section 8101 who had sustained the injury in the performance of duties.

["(B) When an employee (or the employee's dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 is also entitled to benefits from the employee's private sector employer for the same injury or death, the employee (or the employee's dependents in case of death) shall elect which benefits the employee will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable.

["(C) Except as provided in subparagraphs (A) and (B), and notwithstanding any other law, the United States, any instrumentality of the United States, or an employee, agent, or assign of the United States shall not be liable to—

["(i) a private sector employee assigned to the Administration under this section;

["(ii) such employee's legal representative, spouse, dependents, survivors, or next of kin; or

["(iii) any other person, including any third party as to whom such employee, or that employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action arising out of an injury or death sustained in the performance of duty pursuant to an assignment under this section, otherwise entitled to recover damages from the United States, any instrumentality of the United States, or any employee, agen-

cy, or assign of the United States, with respect to any injury or death suffered by a private sector employee sustained in the performance of duties pursuant to an assignment under this section.

["(e)(1) Appropriations of the Administration are available to pay, or reimburse, an Administration or private sector employee in accordance with—

["(A) subchapter I of chapter 57 for the expenses of—

["(i) travel, including a per diem allowance, to and from the assignment location;

["(ii) a per diem allowance at the assignment location during the period of the assignment; and

["(iii) travel, including a per diem allowance, while traveling on official business away from the employee's designated post of duty during the assignment when the Administrator considers the travel to be in the interest of the United States;

["(B) section 5724 for the expenses of transportation of the employee's immediate family, household goods, and personal effects to and from the assignment location;

["(C) section 5724a(a) for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

["(D) section 5724a(c) for subsistence expenses of the employee and immediate family while occupying temporary quarters at the assignment location and on return to the employee's former post of duty;

["(E) section 5724a(g) to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

["(F) section 5726(c) for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

["(2) Expenses specified in paragraph (1), other than those in paragraph (1)(A)(iii), may not be allowed in connection with the assignment of an Administration or private sector employee under this section, unless and until the employee agrees in writing to complete the entire period of his assignment or 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Administrator. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The Administrator may waive in whole or in part a right of recovery under this paragraph with respect to a private sector employee on assignment with the Administration or an Administration employee on assignment with a private sector entity.

["(3) Appropriations of the Administration are available to pay expenses under section 5742 with respect to an Administration or private sector employee assigned under this authority.

["(f) A private sector entity may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the entity to an employee assigned to the Administration under this section for the period of the assignment.

["§9933. Science and technology scholarship program

["(a)(1) The Administrator may carry out a program of entering into contractual agreements with individuals described under paragraph (2) under which—

["(A) the Administrator agrees to provide to the individuals scholarships for pursuing, at accredited institutions of higher education, academic programs appropriate for careers in professions needed by the Administration; and

["(B) the individuals agree to serve as employees of the Administration, for the period described under subsection (b), in positions needed by the Administration and for which the individuals are qualified.

["(2) The individuals referred to under paragraph (1) are individuals who—

["(A) are enrolled or accepted for enrollment as full-time students at accredited institutions of higher education in an academic field or discipline prescribed by the Administration;

["(B) are United States citizens; and

["(C) at the time of the initial scholarship award, are not Federal employees as defined under section 2105.

["(b)(1) For purposes of subsection (a)(1)(B), the period of service for which an individual is obligated to serve as an employee of the Administration is, subject to subparagraph (A) of paragraph (2), 12 months for each academic year for which the scholarship under such subsection is provided.

["(2)(A) Subject to subparagraph (B), the Administrator may provide a scholarship under this section if the individual applying for the scholarship agrees that, not later than 60 days after obtaining the educational degree involved, the individual will begin serving full-time as an employee in satisfaction of the period of service that the individual is obligated to provide.

["(B) The Administrator may defer the obligation of an individual to provide a period of service under this subsection, if the Administrator determines that such a deferral is appropriate.

["(c)(1) The Administrator may provide a scholarship under subsection (a) for an academic year if—

["(A) the individual applying for the scholarship has submitted to the Administrator a proposed academic program leading to a degree in an academic field or discipline approved by the Administration; or

["(B) the individual agrees that the program will not be altered without the approval of the Administrator.

["(2) The Administrator may provide a scholarship under this section for an academic year if the individual applying for the scholarship agrees to maintain a high level of academic standing as defined by regulation.

["(3) The dollar amount of a scholarship for an academic year shall not exceed—

["(A) the limits established by regulation under paragraph (4); or

["(B) the total costs incurred in attending the institution involved.

["(4) A scholarship may be expended for tuition, fees, and other authorized expenses as established by regulation.

["(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided in the scholarship for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which a scholarship is provided.

["(6) An individual may not receive a scholarship for longer than 4 academic years, unless an extension is granted by the Administrator.

["(d)(1)(A) Any scholarship recipient who fails to maintain a high level of academic standing, who is dismissed from an educational institution for disciplinary reasons, or who voluntarily terminates academic training before graduation from the educational program for which the scholarship was awarded, shall—

["(i) be in breach of the contractual agreement; and

["(ii) in lieu of any service obligation arising under such agreement, be liable to the United States for repayment of all scholarship funds paid to that recipient and to the

educational institution on their behalf under the agreement within 1 year after the date of default.

["(B) The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation. A penalty for failure to complete the academic program for which the scholarship was awarded may be assessed at the discretion of the Administrator, in addition to the repayment with interest as provided under paragraph (3).

["(2)(A) A scholarship recipient who, for any reason, fails to begin or complete that recipient's service obligation after completion of academic training, or fails to comply with the terms and conditions of deferment established by the Administrator, shall be in breach of the contractual agreement.

["(B)(i) In this subparagraph—

["(I) the term 'A' means the amount the United States is entitled to recover;

["(II) the term 'F' means the sum of the amounts paid to or on behalf of the participant;

["(III) the term 't' means the total number of months of the period of obligated service the participant is required to serve; and

["(IV) the term 's' means the number of months of the period of obligated service served by the participant.

["(ii) When a recipient breaches the agreement as provided under subparagraph (A), the United States shall be entitled to recover damages equal to 3 times the scholarship award, in accordance with the following formula:

["A=(3F)[(t-s)/t]

["(C) The damages that the United States is entitled to recover shall be paid within 1 year after the date of default.

["(3) Beginning 90 days after default, interest shall accrue on the payments required to be made under this subsection, at a rate to be determined by regulation established by the Administrator.

["(e)(I) Any obligation of an individual incurred under this section for service or payment of damages may be canceled upon the death of the individual.

["(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under this section if—

["(A) the compliance by the individual is impossible or would involve extreme hardship to the individual; or

["(B) enforcement of such obligation with respect to any individual would be contrary to the best interests of the Government.

["(f) The Administrator may provide a scholarship under this section if an application for the scholarship is submitted to the Administrator and the application is in such form, is made in such manner, and contains such agreements, assurance, and information as the Administrator determines to be necessary to carry out this section.

["(g)(I) There are authorized to be appropriated to the Administration to carry out this section \$10,000,000 for fiscal year 2004 and \$10,000,000 for each succeeding fiscal year.

["(2) Amounts appropriated for a fiscal year for scholarships under this section shall remain available for 2 fiscal years.

["§9934. Distinguished scholar appointment authority

["(a) In this section—

["(I) the term 'professional position' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

["(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

["(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

["(2) the term 'research position' means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

["(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

["(1) with respect to a position at the GS-7 level, the individual—

["(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

["(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

["(2) with respect to a position at the GS-9 level, the individual—

["(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

["(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

["(3) with respect to a position at the GS-11 level, the individual—

["(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

["(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

["(4) with respect to a research position at the GS-12 level, the individual—

["(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

["(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

["(c) Veterans' preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of non-preference eligibles.

["(d) An appointment made under this authority shall be a career conditional appointment in the competitive civil service.

["§9935. Travel and transportation expenses of certain new appointees

["(a) In this section, the term 'new appointee' means—

["(1) a person newly appointed or reinstated to Federal service to the Administration to—

["(A) a career or career-conditional appointment;

["(B) a term appointment;

["(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

["(D) a career or limited term Senior Executive Service appointment;

["(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

["(F) an appointment to a position established under section 3104; or

["(G) an appointment to a position established under section 5108; or

["(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

["(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

["§9936. Annual leave enhancements

["(a)(I) In this subsection—

["(A) the term 'newly appointed employee' means an individual who is first appointed—

["(i) regardless of tenure, as an employee of the Federal Government; or

["(ii) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

["(I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

["(II) employment as a law clerk trainee;

["(III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

["(IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

["(V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

["(B) the term 'period of qualified non-Federal service' means any period of service performed by an individual that—

["(i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and

["(ii) except for this section would not otherwise be service performed by an employee for purposes of section 6303; and

["(C) the term 'directly related to the duties of the position' means duties and responsibilities in the same line of work which require similar qualifications.

["(2)(A) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

["(B) A period deemed by the Administrator under subparagraph (A) shall continue to apply to the employee during—

["(i) the period of Federal service in which the deeming is made; and

["(ii) any subsequent period of Federal service.

["(3)(A) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position

paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, shall be 1 day for each full biweekly pay period.

“(B) The accrual rate established under this paragraph shall continue to apply to the employee during—

“(i) the period of Federal service in which such accrual rate first applies; and

“(ii) any subsequent period of Federal service.

“§ 9937. Limited appointments to Senior Executive Service positions

“(a) In this section—

“(1) the term ‘career reserved position’ means a position in the Administration designated under section 3132(b) which may be filled only by—

“(A) a career appointee; or

“(B) a limited emergency appointee or a limited term appointee—

“(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

“(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

“(2) the term ‘limited emergency appointee’ has the meaning given under section 3132; and

“(3) the term ‘limited term appointee’ means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

“(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

“(c) Notwithstanding sections 3132 and 3394(b)—

“(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

“(A) 4 years or less to a position the duties of which will expire at the end of such term; or

“(B) 1 year or less to a position the duties of which are continuing; and

“(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

“(A) paragraph (1)(A) for a period not to exceed 2 years; and

“(B) paragraph (1)(B) for a period not to exceed 1 year.

“(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

“(e) Notwithstanding section 3394(b) and section 3395—

“(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

“(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in ex-

cess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

“(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

“(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

“§ 9938. Superior qualifications pay

“(a) In this section the term ‘employee’ means an employee as defined under section 2105 who is employed by the Administration.

“(b) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.

“(c) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee’s contribution in the new position will exceed that in the former position, before setting pay under this section.

“(d) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

“(e) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

“(f) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

“(g) Before setting any employee’s pay under this section, the Administrator shall submit a plan to the Office of Personnel Management, that includes—

“(1) criteria for approval of actions to set pay under this section;

“(2) the level of approval required to set pay under this section;

“(3) all types of actions and positions to be covered;

“(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

“(5) a process to evaluate the effectiveness of this section.”

“(b) TECHNICAL AND CONFORMING AMENDMENT.—

“(1) TABLE OF CHAPTERS.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

“‘99. National Aeronautics and Space Administration 9901’.”

“(2) COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.—

“(A) IN GENERAL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking “the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,” and inserting “the rate of basic pay payable for level III of the Executive Schedule.”

“(B) EFFECTIVE DATE.—Notwithstanding section 3, the amendment made by this paragraph shall take effect on the first day of the first pay period beginning on or after the effective date of this Act.

“(3) COMPENSATION CLARIFICATION.—Section 209 of title 18, United States Code, is amended by adding at the end the following:

“(g)(1) In this subsection, the term ‘private sector entity’ has the meaning given under section 9932(a) of title 5.

“(2) This section does not prohibit an employee of a private sector entity, while as-

signed to the National Aeronautics and Space Administration under section 9932 of title 5, from continuing to receive pay and benefits from that entity in accordance with section 9932 of that title.”

“SEC. 3. EFFECTIVE DATE.

“[This Act shall take effect 180 days after the date of enactment of this Act.]”

SECTION 1. NASA WORKFORCE AUTHORITIES AND PERSONNEL PROVISIONS.

(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by inserting after chapter 97, as added by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107-296; 116 Stat. 2229), the following:

**“CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
“SUBCHAPTER I—WORKFORCE
AUTHORITIES**

“Sec.

“9801. Definitions.

“9802. Planning, notification, and reporting requirements.

“9803. Workforce authorities.

“9804. Recruitment, redesignation, and relocation bonuses.

“9805. Retention bonuses.

“9806. Term appointments.

“9807. Pay authority for critical positions.

“9808. Assignments of intergovernmental personnel.

**“SUBCHAPTER II—PERSONNEL
PROVISIONS**

“9831. Definitions.

“9832. Administration and private sector exchange assignments.

“9833. Science and technology scholarship program.

“9834. Distinguished scholar appointment authority.

“9835. Travel and transportation expenses of certain new appointees.

“9836. Annual leave enhancements.

“9837. Limited appointments to Senior Executive Service positions.

“9838. Superior qualifications pay.

**“SUBCHAPTER I—WORKFORCE
AUTHORITIES**

“§ 9801. Definitions

“For purposes of this subchapter—

“(1) the term ‘Administration’ means the National Aeronautics and Space Administration;

“(2) the term ‘Administrator’ means the Administrator of the National Aeronautics and Space Administration;

“(3) the term ‘critical need’ means a specific and important requirement of the Administration’s mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

“(A) of the inability to fill positions; or

“(B) employees do not possess the requisite skills;

“(4) the term ‘employee’ means an individual employed in or under the Administration;

“(5) the term ‘workforce plan’ means the plan required under section 9802(a);

“(6) the term ‘appropriate committees of Congress’ means—

“(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

“(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate; and

“(7) the term ‘redesignation bonus’ means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof.

“§ 9802. Planning, notification, and reporting requirements

“(a) Not later than 60 days before exercising any of the workforce authorities under this subchapter, the Administrator shall submit a written plan to the appropriate committees of Congress. A plan under this subchapter may not be

implemented without the approval of the Office of Personnel Management.

“(b) A workforce plan shall include a description of—

“(1) each critical need of the Administration and the criteria used in the identification of that need;

“(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

“(i) address critical needs; and

“(ii) would be eligible for each authority proposed to be exercised under section 9803; and

“(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

“(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this subchapter; and

“(B) the reasons why those needs would not be so addressed;

“(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

“(5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles;

“(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

“(7) the methods that will be used to determine if the authorities exercised under this subchapter have successfully addressed each critical need identified under paragraph (1); and

“(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals;

“(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—

“(i) nongovernmental recruitment or placement agencies; and

“(ii) Internet technologies; and

“(9) any reforms to the Administration's workforce management practices recommended by the Columbia Accident Investigation Board, the extent to which those recommendations will be accepted, and, if necessary, the reasons why any recommendations were not accepted.

“(c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

“(d)(1)(A) The Administrator may submit any modifications to the workforce plan to the Office of Personnel Management. Modifications to the workforce plan may not be implemented without the approval of the Office of Personnel Management.

“(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

“(2) Any reference in this subchapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

“(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

“(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

“(2) give each representative 30 calendar days (unless extraordinary circumstances require ear-

lier action) to review and make recommendations with respect to the proposed plan (or modification); and

“(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

“(f) None of the workforce authorities made available under this subchapter may be exercised in a manner inconsistent with the workforce plan.

“(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

“(h) Not later than 6 years after date of enactment of this subchapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this subchapter, including—

“(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this subchapter successfully addressed each critical need identified under subsection (b)(1);

“(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

“(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

“§9803. Workforce authorities

“(a) The workforce authorities under this subchapter are the following:

“(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9804.

“(2) The authority to pay retention bonuses under section 9805.

“(3) The authority to make term appointments and to take related personnel actions under section 9806.

“(4) The authority to fix rates of basic pay for critical positions under section 9807.

“(5) The authority to extend intergovernmental personnel act assignments under section 9808.

“(6) The authority to apply subchapter II of chapter 35 in accordance with section 9810.

“(b) No authority under this subchapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

“(c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to section 5307.

“§9804. Recruitment, redesignation, and relocation bonuses

“(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

“(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

“(2) the individual—

“(A) is newly appointed as an employee of the Federal Government;

“(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

“(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

“(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

“(1) 50 percent of the employee's annual rate of basic pay (including comparability payments

under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

“(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

“(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

“(1) 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

“(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

“(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

“(B) At a minimum, the service agreement shall include—

“(i) the required service period;

“(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

“(iii) the amount of the bonus and the basis for calculating that amount; and

“(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

“(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

“(f) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials (as such terms are defined in section 7103(a) (10) and (11), respectively).

“§9805. Retention bonuses

“(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

“(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee's services makes it essential to retain the employee; and

“(2) the employee would be likely to leave in the absence of a retention bonus.

“(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

“(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

“(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

“(B) At a minimum, the service agreement shall include—

“(i) the required service period;

“(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

“(iii) the amount of the bonus and the basis for calculating the amount; and

“(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

“(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

“(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

“(g) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials (as such terms are defined in section 7103(a) (10) and (11), respectively).

“§9806. Term appointments

“(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

“(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

“(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

“(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

“(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

“(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

“(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

“(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

“(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

“(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

“§9807. Pay authority for critical positions

“(a) In this section, the term ‘position’ means—

“(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

“(2) a position under the Executive Schedule under sections 5312 through 5317;

“(3) a position established under section 3104; or

“(4) a senior-level position to which section 5376(a)(1) applies.

“(b) Authority under this section—

“(1) may be exercised only with respect to a position that—

“(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

“(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

“(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

“(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

“(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

“(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

“(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

“(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

“(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

“§9808. Assignments of intergovernmental personnel

“For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking ‘two’ and inserting ‘four’.

“SUBCHAPTER II—PERSONNEL PROVISIONS

“§9831. Definitions

“For purposes of this subchapter, the terms ‘Administration’ and ‘Administrator’ have the meanings set forth in section 9801.

“§9832. Administration and private sector exchange assignments

“(a) In this section—

“(1) the term ‘private sector employee’ means an employee of a private sector entity; and

“(2) the term ‘private sector entity’ means an organization, company, corporation, or other business concern, or a foreign government or agency of a foreign government, that is not a State, local government, Federal agency, or other organization as defined under section 3371 (1), (2), (3), and (4), respectively.

“(b)(1) On request from or with the concurrence of a private sector entity, and with the consent of the employee concerned, the Administrator may arrange for the assignment of—

“(A) an employee of the Administration serving in a scientific or technical position as designated by the Administrator, to a private sector entity; and

“(B) an employee of a private sector entity serving in a scientific or technical position to the Administration,

for work of mutual concern to the Administration and the private sector entity that the Administrator determines will be beneficial to both.

“(2) The period of an assignment under this section may not exceed 2 years. However, the Administrator may extend the period of assignment for not more than 2 additional years.

“(3) An employee of the Administration may be assigned under this section only if the employee agrees, as a condition of accepting an assignment, to serve in the Administration upon the completion of the assignment for a period equal to the length of the assignment. The Administrator may waive the requirement under this paragraph, with the approval of the Office of Management and Budget, with respect to any employee if the Administrator determines it to be in the best interests of the United States to do so.

“(4) Each agreement required under paragraph (3) shall provide that if the employee fails to carry out the agreement (except in the case of a waiver made under paragraph (3)), the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount due shall be treated as a debt due the United States.

“(c)(1) An Administration employee assigned to a private sector entity under this section is deemed, during the assignment, to be on detail to a work assignment (as a detailee to the entity).

“(2) An Administration employee assigned under this section on detail remains an employee of the Administration. Chapter 171 of title 28 and any other Federal tort liability statute apply to the Administration employee so assigned, and all defenses available to the United States under these laws or applicable provisions of State law shall remain in effect. The supervision of the duties of an Administration employee assigned to the private sector entity through detail may be governed by agreement between the Administration and the private sector entity concerned.

“(3) The assignment of an Administration employee on detail to a private sector entity under this section may be made with or without reimbursement by the private sector entity for the travel and transportation expenses to or from the place of assignment, for the pay, or supplemental pay, or a part thereof, of the employee, or for the contribution of the Administration to the employee's benefit systems during the assignment. Any reimbursements shall be credited to the appropriation of the Administration used for paying the travel and transportation expenses, pay, or benefits, and not paid to the employee.

“(d)(1) An employee of a private sector entity who is assigned to the Administration under an arrangement under this section shall be deemed on detail to the Administration.

“(2) During the period of assignment, a private sector employee on detail to the Administration—

"(A) is not entitled to pay from the Administration, except to the extent that the pay received from the private sector entity is less than the appropriate rate of pay which the duties would warrant under the pay provisions of this title or other applicable authority;

"(B) is deemed an employee of the Administration for the purpose of chapter 73 of this title, the Ethics in Government Act of 1978, section 27 of the Office of Federal Procurement Policy Act, sections 201, 203, 205, 207, 208, 209, 602, 603, 606, 607, 610, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, chapter 171 of title 28, and any other Federal tort liability statute, and any other provision of Federal criminal law, unless otherwise specifically exempted;

"(C) notwithstanding subparagraph (B), is also deemed to be an employee of his or her private sector employer for purposes of section 208 of title 18; and

"(D) is subject to such regulations as the Administrator may prescribe.

"(3) The supervision of the duties of an employee assigned under this subsection may be governed by agreement between the Administration and the private sector entity.

"(4) A detail of a private sector employee to the Administration may be made with or without reimbursement by the Administration for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the private sector entity, or a part thereof, to employee benefit systems.

"(5)(A) A private sector employee on detail to the Administration under this section who suffers disability or dies as a result of personal injury sustained while in the performance of duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81 as an employee as defined under section 8101 who had sustained the injury in the performance of duties.

"(B) When an employee (or the employee's dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 is also entitled to benefits from the employee's private sector employer for the same injury or death, the employee (or the employee's dependents in case of death) shall elect which benefits the employee will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable.

"(C) Except as provided in subparagraphs (A) and (B), and notwithstanding any other law, the United States, any instrumentality of the United States, or an employee, agent, or assign of the United States shall not be liable to—

"(i) a private sector employee assigned to the Administration under this section;

"(ii) such employee's legal representative, spouse, dependents, survivors, or next of kin; or

"(iii) any other person, including any third party as to whom such employee, or that employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action arising out of an injury or death sustained in the performance of duty pursuant to an assignment under this section, otherwise entitled to recover damages from the United States, any instrumentality of the United States, or any employee, agency, or assign of the United States, with respect to any injury or death suffered by a private sector employee sustained in the performance of duties pursuant to an assignment under this section.

"(e)(1) Appropriations of the Administration are available to pay, or reimburse, an Administration or private sector employee in accordance with—

"(A) subchapter I of chapter 57 for the expenses of—

"(i) travel, including a per diem allowance, to and from the assignment location;

"(ii) a per diem allowance at the assignment location during the period of the assignment; and

"(iii) travel, including a per diem allowance, while traveling on official business away from the employee's designated post of duty during the assignment when the Administrator considers the travel to be in the interest of the United States;

"(B) section 5724 for the expenses of transportation of the employee's immediate family, household goods, and personal effects to and from the assignment location;

"(C) section 5724a(a) for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

"(D) section 5724a(c) for subsistence expenses of the employee and immediate family while occupying temporary quarters at the assignment location and on return to the employee's former post of duty;

"(E) section 5724a(g) to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

"(F) section 5726(c) for the expenses of non-temporary storage of household goods and personal effects in connection with assignment at an isolated location.

"(2) Expenses specified in paragraph (1), other than those in paragraph (1)(A)(iii), may not be allowed in connection with the assignment of an Administration or private sector employee under this section, unless and until the employee agrees in writing to complete the entire period of his assignment or 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Administrator. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The Administrator may waive in whole or in part a right of recovery under this paragraph with respect to a private sector employee on assignment with the Administration or an Administration employee on assignment with a private sector entity.

"(3) Appropriations of the Administration are available to pay expenses under section 5742 with respect to an Administration or private sector employee assigned under this authority.

"(f) A private sector entity may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the entity to an employee assigned to the Administration under this section for the period of the assignment.

"§9833. Science and technology scholarship program

"(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

"(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

"(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

"(b) In order to be eligible to participate in the Program, an individual must—

"(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

"(2) be a United States citizen; and

"(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

"(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

"(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

"(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

"(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

"(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

"(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

"(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

"(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 12 months for each academic year for which a scholarship under this section is provided.

"(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

"(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

"(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

"(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

“(A) the total amount of scholarships received by such individual under this section; plus

“(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 3.

“(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

“(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

“(i) For purposes of this section—

“(1) the term ‘cost of attendance’ has the meaning given that term in section 472 of the Higher Education Act of 1965;

“(2) the term ‘institution of higher education’ has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

“(3) the term ‘Program’ means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

“(j)(1) There is authorized to be appropriated to the Administration for the Program \$10,000,000 for each fiscal year.

“(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

“§9834. Distinguished scholar appointment authority

“(a) In this section—

“(1) the term ‘professional position’ means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

“(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

“(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

“(2) the term ‘research position’ means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

“(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

“(1) with respect to a position at the GS-7 level, the individual—

“(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

“(2) with respect to a position at the GS-9 level, the individual—

“(A) received, from an accredited institution authorized to grant graduate degrees, a grad-

uate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

“(3) with respect to a position at the GS-11 level, the individual—

“(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

“(4) with respect to a research position at the GS-12 level, the individual—

“(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

“(c) Veterans’ preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

“(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

“§9835. Travel and transportation expenses of certain new appointees

“(a) In this section, the term ‘new appointee’ means—

“(1) a person newly appointed or reinstated to Federal service to the Administration to—

“(A) a career or career-conditional appointment;

“(B) a term appointment;

“(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

“(D) a career or limited term Senior Executive Service appointment;

“(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

“(F) an appointment to a position established under section 3104; or

“(G) an appointment to a position established under section 5108; or

“(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

“(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

“§9836. Annual leave enhancements

“(a)(1) In this section—

“(A) the term ‘newly appointed employee’ means an individual who is first appointed—

“(i) regardless of tenure, as an employee of the Federal Government; or

“(ii) as an employee of the Federal Government following a break in service of at least 90

days after that individual’s last period of Federal employment, other than—

“(I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

“(II) employment as a law clerk trainee;

“(III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

“(IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

“(V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

“(B) the term ‘period of qualified non-Federal service’ means any period of service performed by an individual that—

“(i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and

“(ii) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

“(C) the term ‘directly related to the duties of the position’ means duties and responsibilities in the same line of work which require similar qualifications.

“(b)(1) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

“(2) A period deemed by the Administrator under paragraph (1) shall continue to apply to the employee during—

“(A) the period of Federal service in which the deeming is made; and

“(B) any subsequent period of Federal service.

“(c)(1) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, shall be 1 day for each full biweekly pay period.

“(2) The accrual rate established under this paragraph shall continue to apply to the employee during—

“(A) the period of Federal service in which such accrual rate first applies; and

“(B) any subsequent period of Federal service.

“§9837. Limited appointments to Senior Executive Service positions

“(a) In this section—

“(1) the term ‘career reserved position’ means a position in the Administration designated under section 3132(b) which may be filled only by—

“(A) a career appointee; or

“(B) a limited emergency appointee or a limited term appointee—

“(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

“(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

“(2) the term ‘limited emergency appointee’ has the meaning given under section 3132; and

“(3) the term ‘limited term appointee’ means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

“(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

“(c) Notwithstanding sections 3132 and 3394(b)—

"(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

"(A) 4 years or less to a position the duties of which will expire at the end of such term; or

"(B) 1 year or less to a position the duties of which are continuing; and

"(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

"(A) paragraph (1)(A) for a period not to exceed 2 years; and

"(B) paragraph (1)(B) for a period not to exceed 1 year.

"(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

"(e) Notwithstanding section 3394(b) and section 3395—

"(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

"(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

"(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

"(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

"§9838. Superior qualifications pay

"(a) In this section the term 'employee' means an employee as defined under section 2105 who is employed by the Administration.

"(b) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.

"(c) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

"(d) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

"(e) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

"(f) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

"(g) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management, that includes—

"(1) criteria for approval of actions to set pay under this section;

"(2) the level of approval required to set pay under this section;

"(3) all types of actions and positions to be covered;

"(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

"(5) a process to evaluate the effectiveness of this section."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CHAPTERS.—The table of chapters for subchapter I of part III of title 5, United States Code, is amended by adding after the item relating to chapter 97 the following:

"98. National Aeronautics and Space Administration 9801".

(2) COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking "the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended," and inserting "the rate of basic pay payable for level III of the Executive Schedule."

(3) COMPENSATION CLARIFICATION.—Section 209 of title 18, United States Code, as amended by section 209(g)(2) of the E-Government Act of 2002 (Public Law 107-347; 116 Stat. 2932), is amended by adding at the end the following:

"(h) This section does not prohibit an employee of a private sector organization, while assigned to the National Aeronautics and Space Administration under section 9832 of title 5, from continuing to receive pay and benefits from that organization in accordance with section 9832 of that title."

(4) CONTINUED TSP ELIGIBILITY.—Section 125(c)(1) of Public Law 100-238 (5 U.S.C. 8432 note), as amended by section 209(g)(3) of the E-Government Act of 2002 (Public Law 107-347; 116 Stat. 2932), is amended—

(A) in subparagraph (C), by striking "or" at the end;

(B) in subparagraph (D), by striking "and" at the end and inserting "or"; and

(C) by adding at the end the following:

"(E) an individual assigned from the National Aeronautics and Space Administration to a private sector organization under section 9832 of title 5, United States Code; and"

(5) ETHICS PROVISIONS.—

(A) ONE-YEAR RESTRICTION ON CERTAIN COMMUNICATIONS.—Section 207(c)(2)(A)(v) of title 18, United States Code, is amended by inserting "or section 9832" after "chapter 37".

(B) DISCLOSURE OF CONFIDENTIAL INFORMATION.—Section 1905 of title 18, United States Code, is amended by inserting "or section 9832" after "chapter 37".

(6) CONTRACT ADVICE.—Section 207(l) of title 18, United States Code, is amended by inserting "or section 9832" after "chapter 37".

(7) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(A) in section 3111(d), by inserting "or section 9832" after "chapter 37"; and

(B) in section 7353(b)(4), by inserting "or section 9832" after "chapter 37".

Mr. ENSIGN. Mr. President, I ask unanimous consent that the substitute amendment at the desk be agreed to, the committee amendment, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2214) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment, as amended, was agreed to.

The bill, as amended, was read the third time and passed.

CONVEYING CERTAIN LAND IN THE STATE OF ARKANSAS

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of S. 1537 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1537) to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1537) was read the third time and passed, as follows:

S. 1537

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF PROPERTY IN POPE COUNTY, ARKANSAS.

(a) CONVEYANCE ON CONDITION SUBSEQUENT.—Not later than 90 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the "Secretary"), shall convey to the New Hope Cemetery Association (referred to in this section as the "association"), for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of National Forest System land (including any improvements on the land) that—

(1) is known as "New Hope Cemetery Tract 6686c";

(2) consists of approximately 1.1 acres; and

(3) is more particularly described as a portion of the SE ¼ of the NW ¼ of section 30, T. 11, R. 17W, Pope County, Arkansas.

(c) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—The association shall use the parcel conveyed under subsection (a) as a cemetery.

(2) REVERSION.—If the Secretary, after notice to the association and an opportunity for a hearing, makes a finding that the association has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the association fails to discontinue that use, title to the parcel shall, at the option of the Secretary, revert to the United States, to be administered by the Secretary.